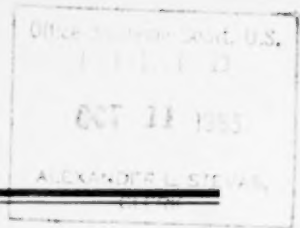


No. 83-458



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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, and  
UNITED STATES DEPARTMENT OF AGRICULTURE,  
*PETITIONERS,*

v.

COMMUNITY NUTRITION INSTITUTE, *ET AL.*

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On Writ Of Certiorari To The United States  
Court Of Appeals For The Seventh Circuit

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**JOINT BRIEF OF RESPONDENTS NATIONAL  
MILK PRODUCERS FEDERATION,  
ASSOCIATED MILK PRODUCERS, INC. and  
CENTRAL MILK PRODUCERS  
COOPERATIVE, IN SUPPORT OF PETITION  
FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT**

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### QUESTIONS PRESENTED

1. Whether the statutory scheme for reviewing market orders set forth in the Agricultural Marketing Agreement Act of 1937 ("AMAA") precludes judicial review of milk market orders at the behest of ultimate consumers of milk products, who are neither regulated handlers nor producers, the direct beneficiaries of the market orders.

2. Whether ultimate consumers of milk products, who assert interests that are either antithetical to the interests Congress sought to promote in the Act or are not implicated by the market orders challenged in this litigation, lack standing to maintain this lawsuit.

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**I. STATEMENT**

Plaintiffs-Respondents, three individual, ultimate consumers of milk products, have challenged the manner in which reconstituted milk is regulated under forty-seven milk market orders adopted pursuant to the AMAA.<sup>1</sup> The

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<sup>1</sup> 7 U.S.C. §§ 601 *et seq.* (1976 & Supp. V 1981).

proceedings in the district and appellate courts are set forth in detail in the petition and shall not be repeated here.

**II. ARGUMENT: PLAINTIFFS, ULTIMATE CONSUMERS OF MILK PRODUCTS, ARE PRECLUDED FROM SEEKING JUDICIAL REVIEW OF MILK MARKET ORDERS BECAUSE THEIR OBJECTIVES IRRECONCILABLY CONFLICT WITH THE SPECIFIC CONSUMER INTERESTS THE AMAA WAS INTENDED TO PROMOTE<sup>2</sup>**

Congress clearly did not intend to protect the particular economic interests asserted by the consumer plaintiffs in this case. Their interest in paying lower prices for reconstituted milk is irrelevant to Congress' main purpose in enacting the AMAA, and antithetical to the important consumer interest the statute does protect, that of assuring consumers a stable supply of wholesome fluid milk products. *See* H.R. Rep. No. 1927, 83d Cong., 2d Sess. 5 (1954); S. Rep. No. 1810, 83d Cong., 2d Sess. 45 (1954).

Congress recognized that in order to ensure the availability of a stable supply of wholesome milk products, producers had to receive a reasonable return for their labor and investment. H.R. Rep. No. 6, 73rd Cong., 1st Sess. 7 (1933). *See also* *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 530 (1949); *United States v. Rock Royal Cooperative, Inc.*, 307 U.S. 533, 570 (1939); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523 (1935); *Nebbia v. New York*, 291 U.S. 502, 517 (1934). This necessarily meant raising producers' prices above unprofitable competitively determined price levels. H.R. Rep.

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<sup>2</sup> This brief does not directly address the second question presented, on standing. Standing is discussed thoroughly in the petition.

No. 1241, 74th Cong., 1st Sess. 7 (1935); S. Rep. No. 1011, 74th Cong., 1st Sess. 3 (1935).

Through their regulatory challenge, which is intended to effect a reduction in consumer prices for reconstituted milk, the consumer plaintiffs here would force a reduction in producer prices by displacing minimum-price *regulated* milk by *unregulated* supplies of reconstituted milk. The effect would be to deprive producers of the income protection Congress intended for them, and so destabilize the nation's fluid milk supply. Upholding jurisdiction over such a suit would therefore create a clear threat to the principal consumer interest the AMAA was enacted to protect.

Under the AMAA the Secretary has issued market orders encompassing many agricultural products including milk, fruits, vegetables, tobacco, and other products collectively worth about six billion dollars in 1982. Should the appellate court's decision here be left standing, consumers would be encouraged to challenge the delicate regulatory structures of federal market orders, which cover not only milk but the entire array of agricultural products.<sup>3</sup> The resulting instability in the affected markets would harm both consumers and producers, frustrating the intent of Congress as clearly manifested in the AMAA.

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<sup>3</sup> See 7 U.S.C. § 608c(2) (1976).

### III. CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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